S.B. Civil Misc. Appeal No.1301/2004
National Insurance Co. Vs. Mohan Lal & ors.

18.11.2005

Hon'ble Mrs. Gyan Sudha Misra,J.

Mr. Vizzy Agarwal, for the appellant.

This appeal has been preferred by the appellant National Insurance Co. Ltd. against the award dated 6.11.2000 passed by the Workmen's Compensation Commissioner under the Workmen's Compensation Act, 1923, who has been pleased to award a sum of Rs.1,10,685/- by way of compensation to the respondent No.1 Shri Mohan Lal, who admittedly had sustained injury on the lower limb of his right leg due to which he is not in a position to drive any vehicle normally.

It is an admitted case that the respondent No.1 is a driver and was earning his livelihood by getting employment as a driver and since his income, which has been assessed at Rs.1,000/- per month, was bound to be affected, the aforesaid amount was awarded to him by way of compensation. This has been awarded after the Commissioner recorded a finding that the respondent No.1 had suffered 17% permanent disability on his right lower limb and the medical report indicates that in future he would not be in a position to drive any vehicle. The medical evidence also supports this position.

Learned counsel for the appellant submitted that although a finding has been recorded that the

respondent No.1 would not be in a position to drive any vehicle, he has got his driving license renewed, which is a proof of the fact that he is not totally disabled. It was also submitted that the finding recorded regarding the disability of the respondent No.1 has not been proved beyond reasonable doubt as the respondent No.1 is not totally deformed so as to affect his driving.

I do not find any substance in either of the contentions recorded hereinbefore. It is an admitted fact that the respondent No.1 is a driver and was earning his livelihood by seeking employment as a driver, which means that his job opportunity to function as a driver is going to be affected as any employer, while engaging a driver, will surely take into consideration whether the driver is totally fit to drive a vehicle. The disability of the respondent No.1, therefore, is bound to come in his way while seeking employment. The medical evidence supports the fact that the respondent No.1's disability holds him disabled to drive a vehicle due to which it would be difficult to accept that he is not disabled merely because he has got his driving license renewed.

Besides this, there is no evidence on record that he got his driving license renewed. But, even if it were correct, it is quite likely that although he would drive his personal vehicle, his employment opportunity by driving a vehicle in order to earn his livelihood is bound to be affected. Hence, the compensation of

Rs.1,10,685/-, which has been assessed after assessing his income @ Rs.1,000/- per month, cannot be held to be exorbitant so as to give a cause to this Court to interfere with the impugned award.

The appeal, under the circumstance, has no merit and hence it is dismissed.

[**Gyan Sudha Misra**],**J.**

/skm/